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judiciary is bound by the decision of the executive department in political questions is clear. Contrary decisions by executive and judicial departments on questions involving the sovereignty or jurisdiction of states, or the status of government, would be a source of embarrassment, and might involve the state in international complications. One department must, then, decide such questions, and the executive department which has charge of the diplomatic relations of the state is obviously the proper one to do so.

The reason for the rule clearly shows it inapplicable to the principal case. No question of sovereignty or jurisdiction was raised. The United States did not dispute the jurisdiction of France in Algeria, nor did any other nation dispute it. The sole question at issue was whether, under the Treaty, goods from Algeria could be regarded as coming from France. It is apparent, then, that no question was raised the decision of which could in any way involve this country in international complications. The court had merely to interpret the meaning of the word "France" as used in the Treaty, and this under the circumstances was clearly a judicial question.

THE NATURE OF BUSINESS GOODWILL. — A recent Indiana case raises the question whether the goodwill of a business is "property" within the terms of a statute which taxed "all property within the jurisdiction of the state not specially exempt," and decides it in the negative. *Hart v. Smith*, 64 N. E. Rep. 661. The court admitted that there is "an almost universal recognition at the present day of goodwill as in the nature of property." They regarded it as clear, however, "that goodwill is not in and of itself property, but that it is an incident that may be attached or in many cases connected with it." Since the decision is based on a misconception of an earlier case, it is fortunately of little authoritative value. The court in consequence of its error treated the goodwill of the business as attaching to the stock in trade, when the judge in the earlier case expressly said that it never could be so regarded. See *Rawson v. Pratt*, 91 Ind. 9, 16.

Lord Eldon's classic definition stated that goodwill was nothing more than the probability that old customers would resort to the old place. See *Cruttwell v. Lye*, 17 Ves. Jr. 334. And Leach, M. R., described it as "the advantage attaching to the possession of the house" in which the business had been carried on. *Chissum v. Dewes*, 5 Russ. 29. In accordance with this view goodwill was treated as "local," attaching to the possession of realty, and hence it was natural to regard it in a way as an incident to property. A broader definition now prevails. Briefly stated, goodwill is conceived to be the advantage possessed by an establishment in consequence of public patronage received from constant or habitual customers on account of its local position, or reputation for skill, affluence, punctuality, etc. See STORY, PARTNERSHIP, § 99. The patronage dependent upon reputation is secured to a firm or business house by its trade names or trade marks. Thus the goodwill of a public house, instead of being incident to the premises alone, attaches to the name by which they are known. See *Woodward v. Lazar*, 21 Cal. 448. The goodwill of a newspaper is annexed to the title under which the paper is published. *Boon v. Moss*, 70 N. Y. 465. And manufacturers find their goodwill dependent upon their trade marks. See *Edwards v. Dennis*, 30 Ch. D. 454. Further, the general tendency of the law under the broader definition is to treat goodwill as itself property. It is regarded as proper subject matter for a sale or bequest. *Howard v.*

Taylor, 90 Ala. 244; *Canham v. Jones*, 2 Ves. & B. 218. So, too, it has been held to be an asset of a partnership. *Cooke v. Collingridge*, 27 Beav. 456. It has also been designated as an asset available in the hands of a trustee in bankruptcy. 46 & 47 VICT. c. 52, § 56. And it has been considered as property within the terms of a statute regulating the issue of stock of a corporation. *Washburn v. National Wall-Paper Co.*, 81 Fed. Rep. 17.

The prevailing view seems correct. The sole reason for denying that goodwill is property lies in the fact that in so far as it is "local" it is assignable only in connection with the transference of realty. But though this fact be true as to the method of its transference in such cases, it does not follow that goodwill is not of itself property. On the other hand, it is recognized that goodwill is of great pecuniary value, and that it is in one way or another assignable. Hence it would seem that goodwill has the two essential attributes of property and must be treated as such.

CONSTITUTIONALITY OF UNEQUAL TAX ASSESSMENT UPON REAL AND PERSONAL PROPERTY. — The problem of adjusting the burdens of government by a fair method of taxation is fast becoming one of the most formidable that confront the legislature and the judiciary. Many constitutions provide that "all taxation shall be equal and uniform"; and where such provision does not exist there is generally a statute of a similar tenor. The judicial interpretation of this form of legislation is of no little interest. Such laws do not mean that there shall be no special tax on a particular district for local improvements, nor that the method of valuation shall be the same for all sorts of property, nor that every tax-payer's burden shall be absolutely just. *Richmond v. Scott*, 48 Ind. 568; *State R. R. Tax Cases*, 92 U. S. 575; *Commonwealth v. Bank*, 5 Allen 428. But they do mean that there shall be no discrimination in estimating the value of property or in the rate of taxation against an individual or a corporation; no discrimination against a class, or against any species of property. See *WELTY, ASSESSMENTS*, § 186; *Bureau Co. v. C. B. & Q. R. R.*, 44 Ill. 229; *R. R. & Tel. Cos. v. Board*, 85 Fed. Rep. 302.

On the whole the courts have inclined towards a narrow rather than a broad construction. A good example of this policy appears in a recent decision of the New York Court of Appeals. A statute provided that "all real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value." An injunction was sought to restrain the collection of part of a tax on certain bank stock from the stockholders, on the ground that the real estate in the city of New York was deliberately assessed at only 60 per cent of its true value. In sustaining a demurrer the court admitted that the plaintiff's suit would properly come within equity's jurisdiction, since there was no adequate remedy at law. But it denied relief, influenced by the considerations that there was no inequality in the valuation of property of the same class, that the assessors presumably acted honestly, that absolute fairness is unattainable, that real estate cannot be hidden and is therefore at a disadvantage as compared with personalty, and that granting relief would upset the whole tax for a year long past. *Mercantile Nat. Bank v. Mayor, etc., of New York*, 172 N. Y. 35.

Admittedly the tax was in direct violation of a legislative mandate, yet the court would not interfere. If this plaintiff alone had had its burden thus illegally increased it would apparently have prevailed. See *Board of*